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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 FINJAN, INC., a Delaware Corporation,
15 Plaintiff,
16 v.
17 CISCO SYSTEMS, INC.,
18 Defendant.

Case No.: 5:17-cv-00072-BLF-SVK

**JOINT CLAIM CONSTRUCTION AND
PRE-HEARING STATEMENT
PURSUANT TO DKT. NO. 70**

Pursuant to the Joint Stipulated Case Schedule As Modified By The Court (Dkt. No. 70) and Patent L.R. 4-3, Plaintiff Finjan, Inc. (“Finjan”) and Defendant Cisco Systems, Inc. (“Cisco” or “Defendant”) hereby submit this Joint Claim Construction and Pre-Hearing Statement.

I. PATENT L.R. 4-3(a): PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties’ agreed upon claim constructions are provided below.

U.S. Patent No. 6,154,844

Claim Term	Claim(s)	Agreed Construction
Downloadable	1, 15, 43	an executable application program, which is downloaded from a source computer and run on the destination computer.

U.S. Patent No. 8,677,494

Claim Term	Claim(s)	Agreed Construction
Downloadable	10	an executable application program, which is downloaded from a source computer and run on the destination computer
database	10	a collection of interrelated data organized according to a database schema to serve one or more applications

U.S. Patent No. 6,804,780

Claim Term	Claim(s)	Agreed Construction
“Downloadable”	1, 9, 17, 18	an executable application program, which is downloaded from a source computer and run on the destination computer.

II. PATENT L.R. 4-3(b): PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties’ proposed additional claim constructions are provided below. All supporting evidence for the parties’ claim constructions is provided in Exhibit A. The parties reserve their rights to cite additional supporting evidence based on arguments raised in the claim construction briefs.

U.S. Patent No. 6,154,844

Claim Term	Claim(s)	Finjan’s Proposed Construction	Defendants’ Proposed Construction
inspector	1, 15, 43	No construction necessary – Plain and ordinary meaning.	external server that is not a network gateway for performing content inspection

U.S. Patent No. 6,154,844

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
			of a Downloadable
web server	1, 15, 43	No construction necessary – Plain and ordinary meaning.	web server that is not a network gateway
Downloadable security profile that identifies suspicious code in [the/a] [received] Downloadable	1, 15, 43	No construction necessary – Plain and ordinary meaning.	a profile that includes a list of code within [the/a] [received] Downloadable for performing undesirable, hostile, or potentially hostile suspicious operations
before a web server makes the Downloadable available to web clients	1, 15, 43	No construction necessary – Plain and ordinary meaning. Plain and ordinary meaning of “web client” is “an application on the computer of an end user that requests a Downloadable from the web server.”	before any web server makes the Downloadable available to any web client
content inspection engine for using the first rule set to generate a first Downloadable security profile that identifies suspicious code in a Downloadable, and for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients	15	No construction necessary – Plain and ordinary meaning.	software running on an external server that is not a network gateway for performing content inspection of a Downloadable that performs the functions recited in the claim *Subject to the constructions for terms within the recited functions
means for receiving a Downloadable	43	Governed by 35 U.S.C. § 112(6): Function: receiving a Downloadable	Governed by 35 U.S.C. § 112(6): Function: receiving a Downloadable Structure:

U.S. Patent No. 6,154,844

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
		Structure: Downloadable file interceptor	inspector 125 that is external to a network gateway
means for generating a first Downloadable security profile that identifies suspicious code in the received Downloadable	43	Governed by 35 U.S.C. § 112(6): Function: generating a first Downloadable security profile that identifies suspicious code in the received Downloadable Structure: content inspection engine programmed to perform the algorithm disclosed at Col. 8, lines 51-60 of the '844 Patent	Governed by 35 U.S.C. § 112(6): Function: "generating a first [Downloadable security profile that identifies suspicious code in the received Downloadable] Structure: Content inspection engine 160 of inspector 125 programmed to perform the algorithm disclosed at 8:49-60 of the '844 patent and 5:36-47, 5:54-57, 8:23-24, 9:20-42, and Fig. 7 of U.S. Patent No. 6,092,194
means for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients	43	Governed by 35 U.S.C. § 112(6): Function: linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients Structure: content inspection engine programmed to perform the algorithm of step 630 disclosed at Fig. 6; col. 8, lines 65-67; and col. 6, lines 13-24	Governed by 35 U.S.C. § 112(6): Function: "linking the first Downloadable security profile to the Downloadable [before a web server makes the Downloadable available to web clients]" Structure: Content inspection engine 160 of inspector 125 programmed to perform step 630 of FIG. 6, disclosed at 8:65-67 and col. 6, lines 13-20. Specifically, attaching a Downloadable security profile to the Downloadable (col. 8, lines 65-67 and col. 6, lines 13-18) or attaching to the Downloadable a pointer that points to a stored Downloadable security profile (col. 6, lines 18-20).
receiving...; generating...; and linking...."	1	No construction necessary – Plain and ordinary meaning.	Order of steps is performed as recited in the claim.

U.S. Patent No. 8,677,494

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
Downloadable scanner	10	No construction necessary – Plain and ordinary meaning.	software for disassembling machine code of a Downloadable and resolving commands to identify suspicious operations in the Downloadable

U.S. Patent No. 6,804,780

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
“obtaining...; fetching...; and performing....”	1	No construction necessary – Plain and ordinary meaning.	Order of steps is performed as recited in the claim.
“software component[s]”	1, 9, 17, 18	No construction necessary – Plain and ordinary meaning.	code module required to be included within a Downloadable for execution as part of the Downloadable
“performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID”	1, 9, 17, 18	performing a hashing function on the Downloadable together with its fetched software components to generate a Downloadable ID	performing a hashing function on the Downloadable together with its fetched software components to generate a unique and reproducible number or string that is the same whether the software components are referenced by the Downloadable and or are included with the Downloadable
“means for fetching at least one software component identified by the one or more references”	17	Governed by 35 U.S.C. § 112(6): Function: fetching at least one software component identified by the one or more references Structure: ID generator programmed to perform the algorithm of step 820 disclosed at Fig. 8; col. 9, lines 62-63; and col. 4, lines 56-66.	Governed by 35 U.S.C. § 112(6): Function: “fetching at least one software component identified by the one or more references” Structure: Indefinite
“means for performing a	17	Governed by 35 U.S.C. § 112(6):	Governed by 35 U.S.C. § 112(6):

U.S. Patent No. 6,804,780			
Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
hashing function on the Downloadable and the fetched software components to generate a Downloadable ID"		<p>Function: performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID</p> <p>Structure: ID generator programmed to perform the algorithm of step 840 disclosed at Fig. 8; col. 9, lines 65-67.</p>	<p>Function: "performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID"</p> <p>*This function is subject to the construction identified elsewhere herein</p> <p>Structure: ID generator 315 programmed to perform algorithm of steps 830 and 840 described at 9:62-67.</p>
"means for obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable"	17	<p>Governed by 35 U.S.C. § 112(6):</p> <p>Function: obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable</p> <p>Structure: ID generator programmed to perform the algorithm of step 810 disclosed at Fig. 8; col. 4, lines 50-54; col. 9, lines 58-61</p>	<p>Governed by 35 U.S.C. § 112(6):</p> <p>Function: obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable</p> <p>Structure: Indefinite</p>
"communications engine for obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable"	9	No construction necessary – Plain and ordinary meaning.	<p>Governed by 35 U.S.C. § 112(6):</p> <p>Function: obtaining a Downloadable that includes one or more references to software components required to be executed by the Downloadable</p> <p>Structure: Indefinite</p>
"ID generator coupled to the	9	No construction necessary – Plain and ordinary	Governed by 35 U.S.C. § 112(6):

U.S. Patent No. 6,804,780

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
communications engine that fetches at least one software component identified by the one or more references"		meaning.	Function: fetching at least one software component identified by the one or more references Structure: Indefinite

U.S. Patent No. 8,141,154

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
"a call to a first function"	1	No construction necessary – Plain and ordinary meaning.	a statement or instruction in a program requesting the services of a particular (i.e., first) function
"a first function"	1	No construction necessary – Plain and ordinary meaning.	substitute function
"a second function"	1	No construction necessary – Plain and ordinary meaning.	original function, which is different than the first function

U.S. Patent No. 7,647,633

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
"mobile protection code"	1, 8, 13, 14	code that, at runtime, monitors or intercepts actually or potentially malicious code operations without modifying the code operations	mobile executable code that, at runtime, monitors for and intercepts actually or potentially malicious code operations
"information-destination of the downloadable-information"	1, 8, 13	No construction necessary – Plain and ordinary meaning. The plain and ordinary meaning of the terms "information-destination" and "downloadable-information destination" is a device or process that is capable of receiving and initiating or otherwise hosting a mobile code execution.	client(s) that originally requested, and is the final destination for, the downloadable-information
"downloadable-information destination"	14		

U.S. Patent No. 7,647,633

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
"determining ... whether the downloadable-information includes executable code"	1, 8, 13	No construction necessary – Plain and ordinary meaning.	distinguishing between two alternative possibilities: executable code is included in the downloadable-information, and executable code is not included in the downloadable-information
"information re-communicator"	2, 3, 9, 10	No construction necessary – Plain and ordinary meaning.	server
"means for receiving downloadable-information"	13	Governed by 35 U.S.C. § 112(6): Function: receiving downloadable-information Structure: re-communicating device	Governed by 35 U.S.C. § 112(6): Function: receiving downloadable-information Structure: server
"means for determining whether the downloadable-information includes executable code"	13	Governed by 35 U.S.C. § 112(6): Function: determining whether the downloadable-information includes executable code Structure: code detection engine to perform the algorithm of col. 2 at 63-66, col. 14, line 58 to col. 15, line 8 or col. 16, lines 16-27.	Governed by 35 U.S.C. § 112(6): Function: determining whether the downloadable-information includes executable code Structure: sever with content inspection engine for performing algorithm of FIG. 10a described at 19:18-47
"means for causing mobile protection code to be communicated to at least one information-destination of the downloadable-information, if the downloadable-information is determined to include"	13	Governed by 35 U.S.C. § 112(6): Function: if the downloadable-information is determined to include executable code, causing mobile protection code to be communicated to at least one information-destination of the downloadable-information without modifying the executable	Governed by 35 U.S.C. § 112(6): Function: causing mobile protection code to be communicated to at least one information-destination of the downloadable-information, if the downloadable-information is determined to include executable code Structure: server with packaging engine 403

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Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
executable code"		code Structure: transfer engine programmed to perform the algorithm of col. 14, lines 24-36.	of FIG. 4 performing the algorithm described at 12:38-12:64 and 13:19-13:41
"A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising:"	14	"A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, comprising:"	Indefinite under <i>IPXL</i> (mixed statutory classes) and <i>Nautilus</i>
"A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising: providing a system...; receiving ...; and causing ..."	14	"A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, comprising: providing a system...; receiving ...; and causing ..."	Indefinite under <i>Nautilus</i> standard
"causing mobile protection code to be executed by the mobile code executor at a	14	No construction necessary – Plain and ordinary meaning.	packaging mobile protection code with the downloadable-information such that upon receipt of the package the mobile protection code is initiated by the

U.S. Patent No. 7,647,633

Claim Term	Claim(s)	Finjan's Proposed Construction	Defendants' Proposed Construction
downloadable-information destination"			mobile code executor at the downloadable-information destination before initiating the downloadable-information

III. PATENT L.R. 4-3(c): IDENTIFICATION OF 10 TERMS WHOSE CONSTRUCTION WILL BE MOST SIGNIFICANT TO RESOLUTION OF THE CASE.

The parties hereby identify in the table below five (5) terms each for a total of ten (10) terms per Patent L.R. 4-3(c):

No.	Patent [Claim]	Term	Identifying Party
1	'844 patent [43]	means for receiving a Downloadable	Finjan
2	'844 patent [43]	means for generating a first Downloadable security profile that identifies suspicious code in the received Downloadable	Finjan
3	'844 patent [43]	means for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients	Finjan
4	'844 patent: [1, 15, 43]	before a web server makes the Downloadable available to web clients	Cisco
5	'633 patent: [13]	means for determining whether the downloadable-information includes executable code	Finjan
6	'633 patent: [13]	means for causing mobile protection code to be communicated to at least one information-destination of the downloadable-information, if the downloadable- information is determined to include executable code	Finjan
7	'633 patent: [1, 8, 13/14]	information-destination of the downloadable-information"/"downloadable-information destination	Cisco
8	'494 patent: [10]	Downloadable scanner	Cisco
9	'780 patent [1, 9, 17, 18]	performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID	Cisco
10	'154 patent: [1]	a first function/a second function	Cisco

Finjan's Statement:

Finjan does not consider any of the disputed terms significant or case or claim dispositive.

Cisco's Statement:

Cisco believes each of the ten (10) terms listed above is claim dispositive individually and case dispositive in the aggregate.

Cisco's Additional Statement:

In addition to the ten (10) terms identified above by the parties under Patent L.R. 4-3(c), Cisco believes that there is a fundamental dispute that must be resolved by the Court under *O2 Micro Int'l v. Beyond Innovation Tech. Co.*, regarding the additional terms listed in Exhibit A that are not in the list of ten (10) terms identified above. Of these terms, Cisco believes that the sub-set of terms listed below are most important, as their constructions are claim dispositive. Cisco will seek leave of Court to brief more than the ten (10) terms identified jointly by the parties.

A. '844 patent

1. "inspector" (claims 1, 15, 43)
2. "Downloadable security profile that identifies suspicious code in [the/a] [received] Downloadable" (claims 1, 15, 43)
3. "content inspection engine for using the first rule set to generate a first Downloadable security profile that identifies suspicious code in a Downloadable, and for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients" (claim 15)

B. '780 patent

4. "software components" (claims 1, 9, 17 and 18)
5. "means for performing a hashing function on the Downloadable and the fetched software components to generate a Downloadable ID" (claim 17)

C. '154 patent

6. "a call to a first function" (claim 1)

D. '633 patent

7. “mobile protection code” (claims 1, 8, 13, 14)

8. “determining ... whether the downloadable-information includes executable code”
(claim 1, 8, 13)

9. Indefiniteness (claim 14):

- a. “A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising:”
- b. “A computer program product, comprising a computer usable medium having a computer readable program code therein, the computer readable program code adapted to be executed for computer security, the method comprising: providing a system...; receiving ...; and causing ...”

10. “causing mobile protection code to be executed by the mobile code executor at a downloadable-information destination” (claim 14)

IV. PATENT L.R. 4-3(d): TIME FOR CLAIM CONSTRUCTION HEARING.

The parties anticipate that they will not require more than three (3) hours for the entire claim construction hearing.

V. PATENT L.R. 4-3(e): WITNESSES AT CLAIM CONSTRUCTION HEARING.

Finjan’s Statement:

Finjan intends to offer a declaration and may present live witness testimony from Dr. Nenad Medvidovic, University of Southern California, 941 Bloom Walk, Los Angeles, CA 90089, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how the above terms are understood by one of skill in the art, and to support Finjan’s claim construction positions. Furthermore, Dr. Nenad Medvidovic will and rebut any testimony or opinions offered by Defendant’s expert witness.

Defendant’s Statement:

Cisco intends to offer a declaration and may present live witness testimony from Dr. Paul Clark, Secure Methods, Inc., 4705 Broad Brook Drive, Bethesda, Maryland 20814, regarding a tutorial of the relevant technology, the technical background of the asserted patents, the qualifications of one of skill in the art at the time of the inventions, how the above terms are understood by one of skill in

1 the art, and to support Cisco's claim construction positions. Furthermore, Dr. Paul Clark will rebut any
2 testimony or opinions offered by Finjan's expert witness.

3
4 Respectfully submitted,

5 Dated: November 20, 2017

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Counsel for Defendant Cisco Systems, Inc.

ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

/s/ Lisa Kobialka
Lisa Kobialka